

established with any reasonable certainty. SBC critiques the MPTA's method and calculation of requested refunds.

Finally, SBC argues that the MPTA is not entitled to attorney fees and has failed to cite any authority for the Commission to grant its request. In fact, SBC argues, one of the cases that the MPTA relies upon to support its request was reversed by the Court of Appeals. In re MCTA Complaint, 239 Mich App 686 (2000). It points out that Section 601 was recently amended to permit the Commission to award attorney fees, and argues that only the relief available at the time the complaint was filed should be permissible. Moreover, SBC argues, this is an NST compliance proceeding, and not a MTA violation case. Because no MTA violations have been proved, no relief under Section 601 should be granted.

Verizon joins SBC in arguing that no refunds should be granted in this case. It argues that the testimony of the MPTA's witnesses is legally and factually incompetent. Verizon states that it had collected from its customers rates found in its lawfully established tariffs. Even if the Commission finds that Verizon's rates do not comply with the NST, Verizon argues, no refunds are necessary and any claim for a refund should be summarily dismissed.

Moreover, Verizon argues, the Commission may evaluate whether a LEC's IPP rates comply with the NST, but the federal statute does not permit the Commission to set IPP rates.

Finally, Verizon argues, the MPTA's request for refunds should not be granted because the proposed refund calculation is admittedly inaccurate. Verizon points to the testimony of the MPTA's witness that testified that the MPTA essentially relied upon one large customer in computing refunds it desired from Verizon. According to Verizon, that witness admitted that the customer was not typical or representative of the MPTA members, which include small providers operating in small towns rather than large metropolitan areas.

To the extent that SBC and Verizon have charged IPP rates in excess of the ceiling imposed by the NST when the EUCL charge or EUSLC is taken into consideration, those companies have charged unlawful rates and a refund is due to their customers.

The Commission rejects the arguments of SBC and Verizon that claim refunds would violate the filed rate doctrine or the prohibition against retroactive ratemaking. Federal and state authority required that SBC's and Verizon's rates comply with the NST no later than April 15, 1997. SBC and Verizon should each file a report within 30 days of the date of this order in which they determine, pursuant to the terms of this order, the amount charged IPPs since that time that is in excess of the ceiling permitted by the NST when the EUCL charge (SBC) or the EUSLC (Verizon) is taken into account. The report shall include interest on the excess collected at the respective company's short-term borrowing rate computed on a quarterly basis. If no challenge to that filing is made within 15 days of its submission, SBC and Verizon shall issue refunds in accordance with those reports as soon as is practicable.

The Commission further finds that it has the authority to order these refunds pursuant to Section 601 of the MTA. To the extent that SBC and Verizon have collected excessive rates, there has been a violation of Section 318(2) of the MTA, which has resulted in economic damage to the MPTA members. Thus, refunds are authorized.

The Commission rejects SBC's characterization of this case as one that did not seek a finding of violation of the MTA, but sought justification of the IPP rates. This case began as a complaint in which the complainants sought remedies associated with the claim that the LECs had charged and were continuing to charge unlawful rates.

However, the Commission is not persuaded that it may award attorney fees in this case. At the time the complaint was filed and at the time of the March 1999 order, the Commission had no

authority to grant attorney fees in this case. A subsequent amendment permitting the grant of attorney fees does not relate back to the beginning of this case. Moreover, even if granting attorney fees were permissible, the Commission would not find granting them appropriate in the present case.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 USC 151 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.
- b. To the extent that their respective IPP rates exceed the ceiling calculated pursuant to the NST, SBC and Verizon have charged unlawful and excessive rates in violation of Section 318(2) of the MTA.
- c. SBC and Verizon shall each, within 30 days, file a report that details the amount by which their IPP rates exceeded the ceiling calculated pursuant to the NST when taking into account the EUCL charge or the EUSLC, and calculate the interest on those excess charges.
- d. If no objections to those reports are filed within 15 days of their submission, SBC and Verizon should issue the required refunds as soon as is practicable.
- e. Except for taking into account the EUCL charge in SBC's rates and the EUSLC in Verizon's rates, the complaint should be dismissed.

THEREFORE, IT IS ORDERED that:

- A. Within 30 days of this order, SBC Michigan and Verizon North Inc. shall file reports that detail the amount by which their rates, taking into account the end-user common line charge or the

end-user subscriber line charge in their respective rates for service to independent payphone providers, exceed the ceiling calculated pursuant to the New Services Test, together with interest as set out in this order.

B. If no objections to those reports are filed within 15 days of their submission, SBC Michigan and Verizon North Inc. shall issue refunds pursuant to those reports as soon as is practicable.

C. Except for the relief granted, the complaint of the Michigan Pay Telephone Association is dismissed.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark  
Chair

( S E A L )

/s/ Robert B. Nelson  
Commissioner

/s/ Laura Chappelle  
Commissioner

By its action of March 16, 2004.

/s/ Mary Jo Kunkle  
Its Executive Secretary

end-user subscriber line charge in their respective rates for service to independent payphone providers, exceed the ceiling calculated pursuant to the New Services Test, together with interest as set out in this order.

B. If no objections to those reports are filed within 15 days of their submission, SBC Michigan and Verizon North Inc. shall issue refunds pursuant to those reports as soon as is practicable.

C. Except for the relief granted, the complaint of the Michigan Pay Telephone Association is dismissed.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

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Chair

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Commissioner

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Commissioner

By its action of March 16, 2004.

\_\_\_\_\_  
Its Executive Secretary

In the matter of the complaint of )  
**MICHIGAN PAY TELEPHONE ASSOCIATION** )  
et al., against **AMERITECH MICHIGAN** and )  
**GTE NORTH INCORPORATED.** )  
\_\_\_\_\_ )

Case No. U-11756  
(After Remand)

Suggested Minute:

“Adopt and issue order dated March 16, 2004 finding that SBC Michigan and Verizon North Inc. collected excessive rates from independent payphone providers and providing a process for refunding the excessive rates, as set forth in the order.”



**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of	)	
	)	
Implementation of the Pay Telephone	)	
Reclassification and Compensation Provisions	)	
Of the Telecommunications Act of 1996	)	
	)	CC Docket No. 96-128
The Michigan Pay Telephone Association's	)	
Petition for Declaratory Ruling Regarding	)	
The Prices Charged by AT&T Michigan	)	
for Network Access Services	)	
Made Available to Payphone Providers in	)	
Michigan.	)	

**TAB 2 ATTACHED TO THE  
MICHIGAN PAY TELEPHONE ASSOCIATION'S  
SECOND PETITION FOR DECLARATORY RULING**



STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\* \* \* \* \*

In the matter of the complaint of	)	
<b>MICHIGAN PAY TELEPHONE ASSOCIATION</b>	)	Case No. U-11756
et al., against <b>AMERITECH MICHIGAN</b> and <b>GTE</b>	)	(After Remand)
<b>NORTH INCORPORATED.</b>	)	
<hr/>	)	

At the February 10, 2005 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. J. Peter Lark, Chair  
Hon. Robert B. Nelson, Commissioner  
Hon. Laura Chappelle, Commissioner

**ORDER DENYING REHEARING**

On March 16, 2004, the Commission issued an order finding that, to the extent that rates exceeded the ceiling calculated pursuant to the New Services Test (NST), SBC Michigan (SBC) and Verizon North Inc. (Verizon) had charged unlawful and excessive rates in violation of Section 318 of the Michigan Telecommunications Act, MCL 484.2318, to independent payphone providers.<sup>1</sup> The order further provided a process for refunding any excessive rates. In all other respects, the complaint filed by the Michigan Pay Telephone Association (MPTA) was dismissed.

On April 15, 2004, the MPTA filed an application for rehearing of the March 16 order. On April 30, 2004, SBC and Verizon filed responses.

Also on April 15, 2004, SBC and Verizon filed their respective refund reports pursuant to the requirements of the March 16 order. On April 30, 2004, the MPTA, AT&T Communications of

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<sup>1</sup>This order uses the current corporate names of the respondents.

Michigan, Inc. (AT&T), and MCI WorldCom Communications, Inc. (MCI), filed objections to those refund reports.<sup>2</sup>

On June 3, 2004 the MPTA advised the Commission that it had settled its dispute with Verizon over issues on pages 11 through 12 of the MPTA's objections. On June 8, 2004, SBC filed a response to the MPTA's objections to its refund report, asserting that its refund report was lawful, appropriate, and accurate.

On July 8, 2004, SBC filed a confidential revised version of its refund report to correct an inadvertent failure to include a one cent increase in the interstate subscriber line charge, which occurred on July 1, 2003.

On August 26, 2004, the MPTA filed a motion for sanctions against SBC for its alleged failure to comply with the Commission's March 16 order, but withdrew the motion on August 31, 2004. On November 12, 2004, the MPTA renewed the motion for sanctions.

On September 13, 2004, the MPTA filed what it termed supplemental authority in support of its application. On September 20, 2004, SBC filed a response. After a review of these two filings, the Commission is persuaded that the Ohio decision attached to the MPTA's September 13 filing is neither controlling nor persuasive on the issues before the Commission. As reflected in SBC's response, the underlying facts are not the same.

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<sup>2</sup>The objections filed by AT&T and MCI generally relate to their roles as interexchange carriers. Both explicitly acknowledge that they do not expect the Commission to address the issues raised. However, they desire to preserve the issue of whether the interexchange carriers are owed refunds of monies paid based on false representations by SBC and Verizon that their payphone rates complied with the NST. The Commission finds that these issues are outside the scope of this complaint case and offers no discussion or resolution.

### Rehearing

In its petition for rehearing, the MPTA argues that the Commission should not have concluded that SBC and Verizon had satisfied the requirements of the NST. It argues that the cost studies produced by the carriers were so vague as to provide the opportunity to backfill the calculations to support whatever rates and results they desired. In fact, the MPTA argues, the Commission's March 16 order provided these companies yet another opportunity to determine that no refunds are required.

The MPTA argues that the Commission must "specify the exact method it is adopting, the specific overhead calculation that it is adopting, and the specific rate that results from the application of this methodology." MPTA's application, p. 4. It argues that the Commission must order the companies to set prospective rates for payphone service at no more than a fixed dollar amount, and must set a date certain by which SBC and Verizon must comply with the Commission's findings. The MPTA takes the position that the Commission must specify the exact overhead that it has adopted, and apply that overhead to all independent payphone (IPP) services.

The MPTA further argues that the Commission must specify that SBC and Verizon must apply the NST to usage sensitive services and for each rate element of each service. It claims that both SBC and Verizon have failed to do so.

Further, the MPTA argues that the Commission should order SBC and Verizon to account for their state end user common line (EUCL) charge assessed against the IPPs when setting their monthly payphone access line rates and in their refund calculations. It faults the Commission's order for the perceived failing to require SBC and Verizon to account for both the state and the federal EUCL. It argues that for the same reasons that these companies must account for the federal EUCL, they must also account for the intrastate EUCL.

Moreover, the MPTA argues, the Commission failed to adequately articulate the amount due to the IPPs from SBC and Verizon to compensate for the years of over paying because of the inclusion of the EUCL in IPP rates. In the MPTA's view, the Commission should adopt its Exhibit 1, which provides the MPTA's calculation of the rate cap it believes that the Commission adopted.

The MPTA further argues that the Commission-approved methodologies produce rates that are fundamentally flawed and inconsistent with the Federal Communications Commission's (FCC) mandates. It reiterates its arguments against using a comparison of business line rates to IPP rates in any fashion. It argues that the Commission erred in relying on the testimony of Dr. Currie for the premise that SBC used costs from Case No. U-11280 for constructing his analysis.

SBC responds that each of the MPTA's arguments on rehearing have been raised, considered, and rejected. It argues that the issues are improperly raised, unsupported by the record, and contrary to Michigan law. SBC asserts that the MPTA merely re-argues many issues that have been fully briefed and decided by the Commission's March 16 order. It notes that much of the rehearing request seeks Commission clarification and further direction concerning how SBC and Verizon should calculate the refunds that the Commission ordered. SBC states that it had no problems understanding or following the Commission's order in preparing the refund report that it filed on April 16, 2004. That report, SBC argues, complies with the Commission's order.

SBC argues that the MPTA's petition does not meet the standard for granting rehearing. It points to the many times that the Commission has stated that rehearing is not an opportunity to merely express disagreement with the Commission's decision, but rather an opportunity to point out errors, newly discovered evidence, or unintended consequences of the decision. SBC states that the MPTA's petition should be denied on this basis.

Moreover, SBC argues, there is no basis in the record or law for granting rehearing. To the MPTA's argument that rates assessed IPPs on individual services must be capped at the specific overhead percentage adopted, SBC states that the Commission found that only the line rates required adjustments for the EUCL. SBC argues that the Commission never stated that the same NST-compliant overhead loading calculated for IPP line rates must be applied to usage services. Rather, SBC used the comparable service of toll service and concluded that the overhead loading for its lowest intraLATA toll rates were higher than the overhead loading for IPP usage services, even accounting for volume and term discounts. It states that this evidence was not challenged on the record. Therefore, SBC argues, the Commission's conclusion that the NST is satisfied concerning SBC's local usage rates is appropriate.

SBC argues that Dr. Currie's aggregate payphone operations overhead loading analysis is appropriate and amply justified on the record. It points to the FCC's findings that the NST is a flexible approach for which differing methodologies may be used if they are justified. It states that the decision to analyze certain services in the aggregate rather than on an individual basis is correct, because the NST contemplates that the overhead loading factor on comparable services be developed and performed on complete services, not individual rate elements. It states that the comparable services in this instance are really a single service with multiple capabilities, and the IPPs and SBC's payphone business compete on the basis of the complete package of services. It further states that taken on an individual level, most of the individual services were not competitive comparable services.

The MPTA's other arguments, SBC argues, are similarly without merit. They were raised and properly resolved by the Commission's March 16 order.

Verizon echoes SBC in arguing that the MPTA's request for rehearing does not meet the standards for granting rehearing. It states that nothing in the MPTA's application addressed the requirements of Rule 403 of the Commission's Rules of Practice and Procedure, R 460.17403. Verizon argues that no clarification is needed concerning the Commission's determination of Verizon's compliance with the NST. Verizon notes that in response to Verizon's compliance filing in this docket, the MPTA did not object to the manner in which Verizon computed the level of rates in compliance with the NST. Thus, Verizon argues, it is plain that the true basis of the MPTA's request for clarification is its disagreement with the Commission's findings and conclusions in the March 16 order.

Verizon notes that in its compliance filing, it did use the COPT<sup>3</sup> overhead allocation as a maximum overhead allocation, and accounted for both the federal and state subscriber line charges. Thus, no clarification is needed. As to the objection concerning usage sensitive rates, Verizon states that the Commission has already concluded that Verizon properly accounted for usage sensitive elements in its COCOT<sup>4</sup> rate. Verizon further points out that the MPTA's proposed Exhibit 1 contains errors and should not be relied upon.

Finally, Verizon argues, the remaining arguments are those extensively briefed with respect to Verizon's cost studies and methodologies. It argues that the Commission properly determined that Verizon was in compliance with the NST.

Rule 403 of the Commission's Rules of Practice and Procedure, 1999 AC, R460.17403, provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from

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<sup>3</sup>COPT refers to a coin-operated pay telephone.

<sup>4</sup>COCOT refers to a customer-owned coin-operated telephone.

compliance with the order. A petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

After a review of the arguments, the Commission concludes that the MPTA's application for rehearing should be denied as it does not meet the standard for granting rehearing. As has been stated many times in Commission orders, rehearing is not merely an opportunity for parties to register disagreement with the Commission's order. The vast majority of the MPTA's application for rehearing does just that. It appears to the Commission that both SBC and Verizon accounted for the federal and state end user subscriber line charges in their calculations. Thus, no clarification is needed. The other arguments were sufficiently addressed in the March 16 order. Therefore, rehearing should be denied.

#### Objections to SBC's Refund Report

The MPTA objects to the refund report filed by SBC, arguing that the company failed to accurately identify telephone numbers (ANIs) of customers that should receive a refund for excessive rates. The MPTA argues that SBC has failed to count those ANIs that (1) were added through merger or acquisitions over the course of this litigation, (2) are managed by the MPTA as an agent for the premise owner, and (3) existed prior to five years ago. The MPTA argues that SBC must refund all excessive rates charged to all non complainant members of MPTA, because otherwise, a discriminatory rate scheme would be in place.

The MPTA suggests that the Commission refer this case to mediation for a determination of an accurate ANI count. The MPTA asserts that its law firm, Kelley Drye & Warren, LLP, should receive the total refund amount for deposit into its client trust fund account. It states that upon

receipt, the firm will work with the MPTA in properly distributing the sums owed each complainant.

The MPTA further argues that the refund report fails to include any refund analysis related to the usage rates assessed the complainants. This argument was rejected in the portion of this order related to the MPTA's rehearing request.

Moreover, the MPTA argues, SBC has taken the opportunity to slip in a requirement that any refund amount is subject to set off of amounts owed by the intended recipient of the refund. It argues that there is no evidence in the record of any billing disputes with any of the complainants in this case.

Finally, the MPTA argues, SBC should be required to file tariff revisions to reflect the findings and conclusions in the March 16 order.

SBC responds that it has produced an accurate and appropriate refund report. It states that it used data for the last seven years, not the five as asserted by the MPTA. It states that although billing information is kept only five years, it maintains ANI history, which it relied upon for the refund report, for seven years. Further, it argues that there is no evidence that SBC was notified of the mergers and acquisitions, or of the agency relationship of the MPTA for various premise owners. SBC further argues that it should not be required to provide refunds to customers that were not parties to this contested case proceeding. Rather, it argues, this case was filed and presumably financed by those members of the MPTA that chose to participate in the action. The complaint, SBC states, lists 62 complainants. It was for these complainants that SBC checked its records to determine the amount of refund owed.

SBC argues that it may not be required to refund monies to those that are not parties to this action, citing Bolt v City of Lansing, 238 Mich App 37 (2000). In that case, the Michigan Court



of Appeals dealt with the issue of whether a prevailing party may obtain monetary relief for persons not named as plaintiffs in the lawsuit. The Court found no provision in the implementing statutes that would permit such a result. Likewise, SBC argues, there is no provision in the MTA that would permit the extension of benefits to others not a party to this case. Thus, it argues, the MPTA's requested relief is not lawful.

SBC argues that the MPTA's claim that it had an agency relationship with certain premise owners is the first indication of this previously undisclosed agency relationship. It argues that none of these premise owners, who allegedly appointed the MPTA as agent, was a named complainant in this case. SBC takes the position that, because only member-complainants that pursued this litigation should be entitled to refunds, it is too late now to claim the existence of such an agency relationship. SBC asserts that only those IPP lines that were billed to a named member-complainant are subject to the refund obligation pursuant to the March 16 order.

SBC states that it has no objection to a non binding Commission-sponsored mediation to attempt to resolve disputes concerning the refund calculations. However, it argues, for issues not resolved through the mediation process, the Commission should conduct more formal proceedings.

As to the request that refunds be sent in lump sum to the Chicago law firm, SBC states that it appears the firm is asserting an attorney lien against the refunds. SBC requests that the Commission provide more specific direction concerning how the refunds should be paid, if not directly to MPTA member-complainants. SBC points out that the March 16 order provides for refunds to the complainants, not a law firm. Therefore, SBC argues, should it pay the law firm, an individual member may later come to SBC seeking its refund.

SBC agrees that it will file tariff revisions after the Commission order resolves the issues raised on rehearing.

The Commission finds that MPTA's objections to the refund report should in large part be rejected. The March 16 order in this case found that to the extent the rates violated the NST, SBC and Verizon must issue refunds to affected customers. The only customers specifically at issue in this case are those 62 named member-complainants. SBC properly presented its count of ANIs related to those member-complainants.

After a review of the arguments, the Commission concludes that there is still a dispute as to whether SBC's refund report captures all of the ANIs for member-complainants. That issue should be referred to mediation. To that end, the Commission directs SBC and the MPTA to choose a mutually agreeable mediator, paid for by these parties, to recommend a settled list of ANIs related to this case. Should one of the parties disagree with the recommendation, that party may file, within 15 days following the recommendation, a request for the Commission to resolve the issue. That filing shall include all documentary evidence and testimony to support the position that a significantly different number is required. Absent a difference of at least 10% in the resulting refund, no adjustment will be made to the mediation recommendation.

The Commission further finds that it will not order the refunds to be paid directly to the law firm, but directs SBC to pay the member-complainants, except to the extent that there is a verified, notarized assignment of a member-complainant's portion of the refund to another.

Finally, the Commission finds that revised tariffs should be filed within 10 days of the date of this order.

#### Motion for Sanctions

As noted earlier, the MPTA filed a motion for sanctions against SBC for its failure to pay the refunds due, implement new IPP rates, and file a complying tariff. After a review of the arguments presented, the Commission declines to increase the sanctions against SBC for its

violations of the NST. However, the Commission cautions SBC that it expects full compliance with the both the letter and spirit of both the March 16 order and this order. Both parties are urged to work together to finally bring this case to a reasonable conclusion.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 USC 151 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.
- b. The application for rehearing filed by the MPTA should be denied.
- c. Within 10 days of the date of this order, SBC should file revised tariffs that reflect the appropriate rates consistent with the March 16 order.
- d. Within 30 days of the date of this order, the parties should engage in mediation as described in this order.

THEREFORE, IT IS ORDERED that:

- A. The April 15, 2004 application for rehearing filed by the Michigan Pay Telephone Association is denied.
- B. Within 10 days of the date of this order, SBC Michigan and Verizon North Inc. shall file revised tariffs that reflect rates consistent with the March 16, 2004 order in this proceeding.
- C. Within 30 days of the date of this order, the parties shall commence mediation proceedings as described in this order.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark

Chair

( S E A L )

/s/ Robert B. Nelson

Commissioner

/s/ Laura Chappelle

Commissioner

By its action of February 10, 2005.


/s/ Mary Jo Kunkle

Its Executive Secretary

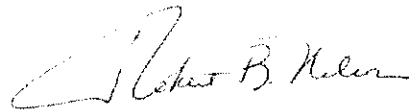
The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

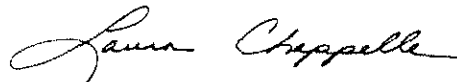
MICHIGAN PUBLIC SERVICE COMMISSION



Chair



Commissioner



Commissioner

By its action of February 10, 2005.



Its Executive Secretary



**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of )  
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Implementation of the Pay Telephone )  
Reclassification and Compensation Provisions )  
Of the Telecommunications Act of 1996 )  
 )  
The Michigan Pay Telephone Association's )  
Petition for Declaratory Ruling Regarding )  
The Prices Charged by AT&T Michigan )  
for Network Access Services )  
Made Available to Payphone Providers in )  
Michigan. )

CC Docket No. 96-128

**TAB 3 ATTACHED TO THE  
MICHIGAN PAY TELEPHONE ASSOCIATION'S  
SECOND PETITION FOR DECLARATORY RULING**

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\* \* \* \* \*

In the matter of the complaint of the )  
MICHIGAN PAY TELEPHONE ASSOCIATION )  
et al. against AMERITECH MICHIGAN and GTE )  
NORTH INCORPORATED. )  
\_\_\_\_\_ )

Case No. U-11756

At the March 8, 1999 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. John G. Strand, Chairman  
Hon. David A. Svanda, Commissioner

OPINION AND ORDER

I.

HISTORY OF PROCEEDINGS

On August 10, 1998, the Michigan Pay Telephone Association (MPTA) filed a complaint regarding the payphone services offered by Ameritech Michigan and GTE North Incorporated (GTE). The MPTA requested that the Commission determine whether Ameritech Michigan and GTE have complied with certain provisions of the Michigan Telecommunications Act (MTA), MCL 484.2201 et seq.; MSA 22.1469(101) et seq., the Communications Act of 1934, as amended by the Telecommunication Act of 1996 (FTA), 47 USC 151 et seq., and orders issued by the Federal Communications Commission (FCC). The complaint involves three major issues:

- (1) Whether the prices for network services are consistent with the new services test adopted by the FCC.



- (2) Whether the payphone operations of Ameritech Michigan and GTE are required to pass an imputation test pursuant to Section 362 of the MTA, MCL 484.2362; MSA 22.1469(362).
- (3) Whether the payphone services provided to independent payphone providers (IPPs) are discriminatory.

On September 1, 1998, a prehearing conference was held before Administrative Law Judge Daniel E. Nickerson, Jr. (ALJ). He granted the petitions for leave to intervene filed by AT&T Communications of Michigan, Inc., (AT&T) and MCI Telecommunications Corporation (MCI). The parties cross-examined the witnesses on November 9, 10, 16, 17, 18, and 19, 1998. The record consists of more than 1,600 pages of transcript and 45 exhibits.

On or before December 9, 1998, the MPTA, Ameritech Michigan, GTE, MCI, and AT&T filed briefs. On December 23, 1998, the MPTA, Ameritech Michigan, GTE, MCI, and AT&T filed reply briefs. On February 16, 1999, the ALJ issued a Proposal for Decision (PFD). On February 23, 1999, the MPTA, Ameritech Michigan, GTE, and MCI filed exceptions. On March 1, 1999, the MPTA, Ameritech Michigan, GTE, MCI, and AT&T filed replies to exceptions.

#### Background

Since 1985, Ameritech Michigan and GTE have made available network services to the IPPs pursuant to an FCC order while continuing to offer payphone service in competition with the IPPs. The MPTA members, who are IPPs, purchase access and other services from Ameritech Michigan and GTE, usually under the IPP line tariff. The IPPs purchase a pay telephone, typically a unit referred to as a "smart" set, from a vendor to attach to the access line they purchase from Ameritech Michigan or GTE. The smart set is a payphone that functions as a computer with the ability to rate calls and perform answer detection, error messaging, and coin return functions at the phone. The